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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,649

12/30/2003

Clayton Charles Troxell

18,951

6902

23556 7590 08/16/2007
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EXAMINER

HALPERN, MARK

ART UNIT

PAPER NUMBER

1731

MAIL DATE

DELIVERY MODE

08/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,649

Applicant(s)

TROXELL ET AL.

Examiner

Mark Halpern

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-17,22-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1) A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/12/2007, has been entered. Claims 1, 2, 10, 25 are amended.

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2) Claims 1, 3-17, 22-28, are rejected under 35 U.S.C. 102(e) as being anticipated by Hermans (6,887,348).

The applied reference has two (2) common inventors, Troxell, and Baum, with the instant application. Based upon the earlier effective U.S. filing date of the reference,

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it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claims 1, 3-17, 25: Hermans discloses a single web product made of pulp fibers produced by conventional wet lay paper making process. The product is a tissue. A softening agent chemical additive is applied to either or both sides of the tissue. The chemical additive is polysiloxane (col. 12, lines 40-50). After drying, the tissue is rolled onto reel 24 (col. 11, line 28 to col. 12, line 60). The tissue roll bulk is in the range of about 11.5 cc/g to greater than about 14 cc/g (col. 17, lines 24-34). The tissue fuzz-on-edge, obtained by shear calendering, is in the range of greater than about 1.7 mm/mm to greater than 3.5 mm/mm (col. 17, lines 14-24). The product Kershaw firmness is in the range of less than 7.8 mm to less than 7.0 mm (col. 17, lines 3-11). The product Kawabata bending stiffness is disclosed in tables of Examples 1, 3 (cols. 19-20). The method of application of the chemical additive, being extruded and placed on the web does not structurally differentiate the instant product over the cited prior art.

Claims 22, 24: the viscosity of the chemical additive applied to the web does not structurally differentiate the instant product over the product of Hermans since viscosity is a measure of resistance to flow of the additive.

Claims 23, 26-28: the additive application does not structurally differentiate the product from the prior art.

Response to Amendment

- 3) Claims 1, 3-17, 22-28 rejection under 35 U.S.C. 112, first paragraph, is withdrawn in view of amended claims.
- 4) Claims 1, 3-17, 22-28 rejection under 35 U.S.C. 112, second paragraph, is withdrawn in view of amended claims.
- 5) Applicant's arguments filed 7/12/2007, have been fully considered but they are not persuasive.

Applicants allege that the cited prior art, Hermans, does not disclose the application of a plurality of extruded chemical additive filaments extruded onto the web. Hermans discloses a softening agent chemical additive being applied to either or both sides of the tissue. The chemical additive is polysiloxane. The chemical additive method of application, being extruded and placed on the web does not structurally differentiate the instant product over the cited prior art.

Applicant alleges that Hermans discloses chemical additive application to the web while the web is still wet after formation.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the condition of the web during application) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Conclusion

6) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone no. is 571-272-1190.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Mark Halpern/
Primary Examiner
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